

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
OFFICE OF PROFESSIONAL STANDARDS**

In the Matter of WIC Vendor License	)	OPS No. 96-05-31-385 WV
of:	)	
	)	
PINE CANYON MARKET,	)	FINDINGS OF FACT,
Melody Brennan, Owner,	)	CONCLUSIONS OF LAW,
	)	AND FINAL ORDER
Respondent.	)	
_____	)	

An administrative hearing was held on July 12, 1996, before Senior Health Law Judge Eric B. Schmidt, Presiding Officer for the Department of Health. The hearing was held at the Law and Justice Building in Wenatchee, Washington. Margaret Bichl, Assistant Attorney General, represented the WIC Program of the Department of Health (the Program). Dan Brennan, co-owner of Pine Canyon Market, appeared on behalf of Pine Canyon Market (the Respondent). The hearing was recorded by Barbara J. Hirsch, court reporter. Having considered the testimony and evidence presented during the hearing, the Presiding Officer makes the following:

**I. PROCEDURAL HISTORY**

1.1 On May 13, 1996, Pine Canyon Market, a vendor participant in the Women Infants and Children Supplemental Food Program (WIC) which is administered by the Department of Health, was served official notice of disqualification in the WIC Program for one year. The notice of disqualification informed the Respondent that it had 30 days from receipt of the notice to contest this decision.

1.2 On May 23, 1996, Melody Brennan, co-owner of the Respondent, submitted a request for an administrative hearing to the Department of Health, Office of Professional Standards.

13 On June 4, 1996, the Office of Professional Standards issued a Notice of Hearing, which scheduled the hearing for July 12, 1996 at 9:00 a.m.

14 On July 8, 1996, the Presiding Officer issued Prehearing Order No. 1: Order Continuing Hearing Time, which granted the Program's motion to delay the starting time of the hearing from 9:00 a.m. to 11:00 a.m. On July 10, 1996, an Amended Notice of Hearing was served on the Respondent and the Program, changing the starting time of the July 12, 1996, hearing to 11:00 a.m.

15 At the July 12, 1996 hearing, Rebecca J. Waite and Timothy Hustad testified for the Program. Daniel Brennan testified for the Respondent. The following exhibits were offered by the Program, were not objected to by the Respondent, and were admitted into evidence by the Presiding Officer:

- Exhibit 1: April 10, 1990 letter from Susan Evans, DSHS WIC Program Contracts, to Melody Brennan.
- Exhibit 2: Request for Authorization to participate in WIC Program by the Respondent on April 17, 1990.
- Exhibit 3: Pre-Authorization Visit form, dated April 17, 1990.
- Exhibit 4: WIC Vendor Contract with the Respondent, dated April 20, 1990.
- Exhibit 5: April 24, 1990 letter from Susan Evans to Melody Brennan, authorizing participation in WIC program.
- Exhibit 6: August 29, 1990 letter from Loren Bell, DSHS Office of WIC Services, to Daniel Brennan, regarding renewal of contract.
- Exhibit 7: Food Price List from the Respondent, dated September 24, 1990.
- Exhibit 8: Request for Authorization to participate in WIC Program by the Respondent on September 25, 1990.
- Exhibit 9: December 21, 1990 letter from Susan Evans to Daniel Brennan, authorizing participation in WIC program.
- Exhibit 10: WIC Vendor Contract with the Respondent, dated December 19, 1990.
- Exhibit 11: July 18, 1991 letter from Orma Stout, DOH WIC Program, to the Respondent, regarding routine monitoring visit.
- Exhibit 12: October 21, 1992 letter from Susan Evans, DOH Office of WIC Services, to Daniel Brennan, regarding renewal of contract.
- Exhibit 13: Request for Authorization to participate in WIC Program by the Respondent on October 29, 1992.

Exhibit 14: Food Price List from the Respondent, dated October 29, 1992.  
Exhibit 15: January 14, 1993 letter from Jill Rutherford to Daniel Brennan, authorizing participation in WIC program.  
Exhibit 16: Food Price List from the Respondent, dated October 24, 1993.  
Exhibit 17: WIC Vendor Contract with the Respondent, dated December 18, 1992.  
Exhibit 18: Request for Authorization to participate in WIC Program by the Respondent on February 20, 1995.  
Exhibit 19: Food Price List from the Respondent, dated February 20, 1995.  
Exhibit 20: Letter from Susan Evans to Daniel Brennan, authorizing participation in WIC program for April 1, 1995 through March 31, 1997.  
Exhibit 21: Food Price List from the Respondent, dated September 26, 1995.  
Exhibit 22: WIC Vendor Contract with the Respondent, dated March 22, 1995.  
Exhibit 23: January 30, 1996, letter from Pat Jordan, DOH Grocer Education and Training Specialist, to the Respondent regarding training session.  
Exhibit 24: February 22, 1996, notice from Pat Jordan regarding training opportunity.  
Exhibit 25: February 29, 1996, Grocer Monitor Report, prepared by Pat Jordan during visit to the Respondent.  
Exhibit 26: March 22, 1996, letter from Rebecca J. Waite of the WIC Program to the Respondent, regarding non-compliance discovered during store visit.  
Exhibit 27: Return receipt for mailing, dated March 25, 1996.  
Exhibit 28: May 1, 1996, Grocer Monitor Report, prepared by Tim Hustad during visit to the Respondent.  
Exhibit 29: May 13, 1996, letter from Rebecca Waite to the Respondent, notifying it of disqualification from participation in WIC program.  
Exhibit 30: Return receipt for mailing, dated May 17, 1996.  
Exhibit 31: May 23, 1996, letter from Melody Brennan, requesting administrative hearing.

## **II. FINDINGS OF FACT**

21 On April 20, 1990, the Respondent Pine Canyon Market, entered into a contract with the Department of Social and Health Services to serve as a vendor for the Women, Infant, and Children (WIC) Supplemental Food Program. (Exhibit 4). In that

contract, the Respondent agreed to provide services in accordance with the WIC Vendor Rules and with the Special Terms and Conditions contained in the contract.

2.2 The Respondent renewed its contracts to serve as a WIC vendor in December 1990, December 1992, and March 1995. (Exhibits 10, 17, and 22). Those contracts contained the same agreements to comply with the Special Terms and Conditions contained in the contracts.

2.3 Paragraph 4.c of the Special Terms and Conditions states as follows:

Stock sufficient quantities of authorized WIC foods to meet the demands of WIC customers shopping at the store. All contracted WIC food vendors must maintain minimum stock levels as indicated on the Authorized WIC Food List. Waivers of this requirement must be requested in writing by the contractor and issued in writing by the WIC Program. (Refer to WAC 246-790-070(3)(b)). The WIC Program reserves the right to review shelf price records, wholesale receipts, cash and carry receipts, and purchase orders to determine that such quantities are available.

2.4 The minimum stock levels are set by federal and state regulations. The minimum stock levels are set at the ability to serve seven WIC clients and fully provide the items included on the WIC clients' vouchers.

2.5 The foods listed on each WIC client's voucher are specifically prescribed, with the intent that the WIC client will obtain and use all of the foods prescribed. The failure of a vendor to have a prescribed food in stock when the WIC voucher is used may affect the health and well-being of the WIC client. Accordingly, WIC vendors must have the minimum stocking levels on hand at all times.

2.6 On February 29, 1996, Pat Jordan of the WIC Program performed a routine vendor monitoring visit on the Respondent. (Exhibit 25). Ms. Jordan found six deficiencies in the stock levels of WIC foods:

- 1) Eleven cans of powdered Enfamil and 3 cans of powdered Prosobee on hand. Thirty cans of powdered formula (or equivalent amount of concentrated formula) required minimum.
- 2) Five jars of peanut butter on hand. Seven jars required minimum.

- 3) Twelve pounds of cheese on hand. Fourteen pounds required minimum.
- 4) Ten dozen eggs on hand. Fourteen dozen required minimum.
- 5) Thirteen 6&1/8-ounce cans of tuna, totaling 80.6 ounces, on hand. Seventeen 6&1/8-ounce cans, totaling 104 ounces (or equivalent amounts in other can sizes), required minimum.
- 6) No carrots. Eight pounds of fresh, frozen or canned carrots required minimum.

2.7 The WIC Program informed the Respondent of these deficiencies by letter dated March 22, 1996. (Exhibit 26). Melody Brennan acknowledged receipt of the letter. (Exhibit 27). In the letter, the Respondent was reminded of the contractual requirement to stock minimum levels of WIC foods, and was informed that the letter served as an official Notice of Correction. The letter required the Respondent to submit a letter within 30 days outlining the corrective action the Respondent planned to take to correct the stocking level deficiencies.

2.8 The WIC Program did not receive a corrective action plan from the Respondent.

29 On May 1, 1996, a follow-up vendor monitoring visit was performed by Tim Hustad of the WIC Program staff. (Exhibit 28). Mr. Hustad found three deficiencies in the stock levels of WIC foods:

- 1) Nine cans of powdered Enfamil and 4 cans of powdered Prosobee on hand. Thirty cans of powdered formula (or equivalent amount of concentrated formula) required minimum.
- 2) Eleven pounds of cheese on hand. Fourteen pounds required minimum.
- 3) Twelve 6&1/8-ounce cans of tuna, totaling 74.4 ounces, on hand. Seventeen 6&1/8-ounce cans, totaling 104 ounces (or equivalent amounts in other can sizes), required minimum.

2.10 On May 13, 1996, the WIC Program informed the Respondent by letter that the problem with lack of stock of WIC foods had not been corrected, and for that reason, the Respondent was disqualified from participation in the WIC Program for one year, effective June 1, 1996. (Exhibit 29). Melody Brennan acknowledged receipt of

the letter. (Exhibit 30). The letter informed the Respondent it could contest the disqualification decision by requesting an administrative hearing.

2.11 The Respondent requested an administrative hearing. (Exhibit 31). At the hearing, Daniel Brennan acknowledged that the reports of deficiencies were correct. He explained that the monitoring visits had taken place shortly after large numbers of WIC clients had used their vouchers, and thus the stock levels for some items had temporarily fallen below the required minimums. He testified that the WIC clients in his area tended to save up a number of WIC vouchers and then do their shopping one time, rather than shopping after each WIC voucher was received.

2.12 Mr. Brennan also admitted that the Respondent had received the March 22, 1996 letter, and had not submitted a corrective action plan. He testified the letter was received during the construction of a new facility for the store, and had not been attended to because he had “dropped the ball.”

2.13 The Respondent contends disqualification from the WIC Program is unwarranted because the deficiencies in stocking levels were temporary and were caused by a large number of WIC clients using a large number of WIC vouchers at once. The Presiding Officer does not find this reason persuasive. The Respondent has been operating the store for seven years, and has been a WIC vendor for almost six years. The Respondent admitted that the tendency of WIC clients in their areas to use a large number of WIC vouchers at one time is not new. The Respondent should have been able to anticipate this pattern of purchasing, and maintain stock levels

accordingly. Further, there are 71 WIC clients in the Orondo area, of which 14 to 21 regularly shop at the Respondent’s store. The minimum stock levels are set for 7 WIC clients, which is not unduly burdensome. Finally, the Respondent had opportunities to prevent the disqualification by requesting a waiver of the minimum stock level requirements, or by submitting a corrective action plan explaining how the temporary deficiencies would be remedied. The Respondent did neither, and did not restore its stock to the required minimum levels. The Presiding Officer finds that disqualification is

an appropriate sanction for the Respondent's failure to observe the terms of its vendor contract.

### **III. CONCLUSIONS OF LAW**

3.1 The Presiding Officer, as the delegate of the Secretary of the Department of Health, has jurisdiction over the Respondent's request for a hearing in this matter. WAC 246-790-120(2).

3.2 WAC 246-790-100(7) provides that "a food vendor's failure to maintain a sufficient stock of WIC authorized foods . . . may result in a one-year disqualification."

3.3 The Presiding Officer concludes the Respondent has failed to maintain a sufficient stock of WIC authorized foods and has breached the vendor agreement into which it entered with the WIC Program. The Presiding Officer concludes that a one-year disqualification from participation in the WIC Program is a reasonable sanction for that failure and breach. The reasons presented by the Respondent do not provide sufficient justification for eliminating or reducing the period of disqualification.

### **IV. FINAL ORDER**

Based upon the Procedural History, Findings of Fact and Conclusions of Law above, the Presiding Officer issues the following ORDER:

4.1 The May 13, 1996 decision of the WIC Program disqualifying the Respondent, Pine Canyon Market, from participation in the WIC Program for one year, effective June 1, 1996, is hereby AFFIRMED.

THE PARTIES ARE FURTHER ADVISED, pursuant to RCW 34.05.461 and 34.05.470, that within ten (10) days of service of this Order you may file a petition for reconsideration with the Office of Professional Standards, Department of Health, P.O. Box 47872, Olympia, Washington 98504-7872. The petition shall state the specific grounds upon which relief is requested. The petition for reconsideration shall not stay the effectiveness of this Final Order. The petition is deemed to have been denied if, within twenty (20) days of the date of its filing, the Department has not disposed of your

petition or has not served you with written notice specifying the date by which action will be taken on your petition.

“Filing” means actual receipt of the document by the Office of Professional Standards. RCW 34.05.010(6). This Order was “served” upon you on the day it was deposited in the United States mail. RCW 34.05.010(18).

Proceedings for judicial review may be instituted by filing a petition in superior court in accord with the procedures specified in Title 34 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after you have been served with this Final Order, as provided by RCW 34.05.542.

DATED THIS \_\_\_\_ DAY OF AUGUST, 1996.

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ERIC B. SCHMIDT, Senior Health Law Judge  
Presiding Officer

I declare that today I served a copy of this document upon the following parties of record: MARGARET BICHL, DAN BRENNAN, MELODY BRENNAN by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA, WASHINGTON THIS \_\_\_\_ DAY OF AUGUST, 1996.

Office of Professional Standards

cc: REBECCA WAITE